Resolution of Landowner Concerns

32. Eight parties have intervened in this proceeding, including Johnny Hochstein, Lois J. White, Paul Durbin, Ben Scott, Jr., Percy & Zina Lamar Foundation, Laurens Schilderink, Deidre S. Henderson, and Charlotte Gilbreath. None of these parties have requested a hearing on the merits in this proceeding.

33. One intervening party, Johnny Hochstein, has objected to the location of the proposed Newhart Substation but did not request a hearing.

Project Alternatives

34. SPS did not analyze distribution alternatives, upgrading voltage or bundling of conductors of existing facilities, adding transformers, or distributed generation alternatives because those alternatives would not satisfy the reliability requirements of the STEP study to address overloads and low voltage violations during contingency outages in the SPS Central Service Area.

Routes

35. SPS considered and submitted a sufficient number of geographically diverse routes for the proposed transmission line.

36. The proposed transmission line complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101.

37. The proposed route complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101 and is the best alternative weighing the factors contained therein.

Community Values

38. Pursuant to P.U.C. PROC. R. 22.52(a)(4), SPS and Atkins North America, Inc. (Atkins) conducted two public open-house meetings on June 7 and 9, 2011, at the Hart Golden Group Building in Hart, Texas, between the hours of 5:30 p.m. and 7:30 p.m.

39. Information received from the public open-house meetings and from local, state, and federal agencies was considered and incorporated into both Atkins's routing analysis and SPS's selection of alternative routes.

40. Commission Staff recommends that SPS cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed transmission line.

41. There are eight habitable structures located within 300 feet of the proposed transmission line along the proposed route.

42. There are no commercial AM radio towers within 10,000 feet of the transmission line along the proposed route.

43. One communication tower is located within 2,000 feet of the transmission line along the proposed route.

44. There are no FAA registered airfields within 20,000 feet of the centerline of the proposed route. There are no known heliports within 5,000 feet of the proposed route. There is one private airstrip within 10,000 feet of the centerline of the proposed route. Typical structures for this transmission line segment would be between 80 and 140 feet tall, depending on location and design. Therefore, SPS does not anticipate any proposed transmission line structures exceeding the height and slope restriction which would require FAA notification.

Park and Recreational Areas

45. No parks or recreational areas are located within 1,000 feet of the proposed centerline of the proposed route.

Historical and Archeological Areas

46. None of the alternate routes cross any previously recorded historical or archeological sites. The proposed route does not cross any previously recorded historical or archeological sites, and there are no such sites within the project area.

Aesthetic Values

47. The aesthetic impacts of the proposed transmission line have been considered and minimized to the extent possible.

Effect of Granting the CCN on Other Utilities

48. The proposed transmission line will not adversely affect service by other utilities in the area and will result in SPS being able to provide reliable service.

Environmental Impact

49. Construction of the transmission line will not have a significant effect on the geologic or physiographic features of the area.

50. The transmission line will not have a long-term impact on soils. SPS will inspect the right-of-way (ROW) during and after construction to identify problem erosion areas and will take special precautions to minimize vehicular traffic over areas with very shallow soils.

51. SPS or its contractor will control soil erosion associated with construction activity by re-vegetating erosion-prone, disturbed areas as soon as possible following construction and any required clearing.

52. Transmission structures will be located outside of designated floodways.

53. Construction of the proposed transmission line will proceed in such a manner as to have minimal impact on water resources within the transmission corridor.

54. The transmission line will have minimal impact on prime farmland and will be limited to the physical occupation of small areas at the base of support structures.

55. The transmission line is not located within the boundaries of the Texas Coastal Management Program as defined 31 T.A.C. § 503.1.

56. Construction of the transmission line will minimize to the extent practicable adverse environmental impacts to sensitive plant and animal species and their habitats.

57. No plants currently listed as threatened or endangered by United States Fish and Wildlife Service (USFWS) and Texas Parks and Wildlife Department (TPWD) are known to occur along the proposed transmission line routes or on substation sites. No impacts to any federally or state-protected plant species are expected to result from this project.

58. No impacts to federal or state listed threatened or endangered wildlife or aquatic species are anticipated.

59. Non-listed, sensitive species that may occur in the habitat are the Black-tailed Prairie Dog, the Ferruginous Hawk, the Western Burrowing Owl, and the Swift Fox. If construction is to occur within or adjacent to a prairie dog colony during burrowing owl nesting season from March 1 to August, SPS will consult USFWS for any required surveys.

60. Any construction activities should avoid burrows, including prairie dog colonies and mammal burrows to avoid potential impacts to the Black-tailed Prairie Dog and the Swift Fox.

61. SPS has conducted an adequate evaluation of potential environmental impacts of the proposed transmission line in the impacted area.

Prudent Avoidance

62. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance. There are eight habitable structures within 300 feet of the centerline of the proposed route.

63. The proposed project complies with the Commission's policy of prudent avoidance.

64. Utilization of a 70-foot ROW for the proposed project mitigates the impact of the project on the community and local landowners.

TPWD Written Comments and Recommendations

65. SPS is obligated to comply with all environmental laws and regulations independent of any language included by the Commission in an Order.

66. In addition to obtaining a CCN from the Commission, SPS may need additional permits and may be required to make additional notification in order to construct the project.

67. After a transmission line route has been selected and approved by the Commission, qualified individuals will conduct a field assessment of the entire length of the project to identify water resources, cultural resources, potential migratory bird issues,

and threatened or endangered species habitat that may be impacted as a result of the project. As a result of these assessments, SPS will identify additional permits that are necessary, will obtain all necessary environmental permits, and will comply with the relevant permit conditions during construction and operation of the transmission line.

68. SPS will utilize permitted biological monitors to ensure compliance with the Endangered Species Act.

69. SPS's construction practices are sufficient and thus no additional permitted biological monitors are necessary during clearing and construction activities for state-listed species.

70. SPS will undertake measures necessary to comply with the Migratory Bird Treaty Act.

71. The standard mitigation requirements included in the ordering paragraphs in this Order, coupled with SPS's construction and mitigation practices are reasonable measures for a utility to undertake when constructing a transmission line.

72. SPS will use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

73. To the extent prairie dog towns are in the immediate proximity of the route, SPS will undertake the measures described in the letter dated January 6, 2012, from TPWD that is in the record in this docket regarding the Black-Tailed Prairie Dog.

II. Legal Conclusions

1. SPS is an electric utility as defined in PURA §§ 11.004 and 31.002(6).

2. SPS is not a participant in the retail competition market under PURA, Chapter 39, Subchapter I.

3. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, and 37.056.

4. SPS provided proper notice of the application in compliance with PURA § 37.054 and P.U.C. Proc. R. 22.52(a).

5. This docket was processed in accordance with the requirements of PURA and Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (Vernon 2008 & Supp. 2010).

6. SPS is entitled to approval of the application, having demonstrated that the proposed transmission line facilities are necessary for the service, accommodation, convenience, and safety of the public within the meaning of PURA § 37.056(c).

7. The proposed route complies with all aspects of PURA § 37.056 and P.U.C. Subst. R. 25.101, as well as the Commission's policy of prudent avoidance.

8. This application does not constitute a major rate proceeding as defined by P.U.C. Proc. R. 22.2.

9. The requirements for administrative approval pursuant to P.U.C. Subst. R. 25.101(b)(3)(C) have been met in this proceeding.

10. The requirements for informal disposition under P.U.C. Proc. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these statements of fact and legal conclusions, the Commission issues the following Order:

1. SPS's application is approved.

2. SPS's CCN No. 30153 is amended to include the construction of the transmission line facilities requested in the application. SPS will use the proposed route, comprised of Segments C2, C3, C5a, C5b, C7, C10, C16, C30, C37, C38, and C51, approximately 23.46 miles in length, as described in the application.

3. In the event SPS or its contractors encounter any artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource

and the discovery shall be reported to the Texas Historical Commission. In that situation, SPS shall take action as directed by the Texas Historical Commission.

4. SPS shall implement erosion control measures as appropriate. Also, SPS shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner. SPS shall not be required to restore original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.

5. SPS shall follow the procedures for raptor protection outlined in the *Avian Power Line Interaction Commission (APLIC), Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 2006* (2006); and in the APLIC and USFWS in the *Avian Protection Plan Guidelines* (2005). SPS shall take precautions to avoid disturbing occupied nests and will take steps to minimize the impact of construction on migratory birds, especially during nesting season.

6. SPS shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW, and shall ensure that such herbicide use complies with the rules and guidelines established in the Federal Insecticide, Fungicide, and Rodenticide Act and with the Texas Department of Agricultural regulations.

7. SPS shall minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary to establish appropriate ROW clearance for the transmission line. Additionally, SPS shall re-vegetate using native species and shall consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practicable, SPS shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the USFWS.

8. SPS shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

9. SPS shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviation to the approved route shall only directly affect landowners who received notice of the

transmission line in accordance with P.U.C. Proc. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation, excluding public rights-of-way.

10. SPS shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, SPS shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or delay in the project. Unless these two conditions are met, this paragraph does not authorize SPS to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.

11. SPS shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b).

12. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 30th day of January 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

ANDREW KANG
ADMINISTRATIVE LAW JUDGE